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**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

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<b>T.P., a minor,</b>	:	
<b>through his Educational Guardian Eli Zlokas</b>	:	
<b>and Jennifer Staley McCrady</b>	:	
<b>as next friend</b>	:	
	:	<b>C.A. No. 2010 - _____</b>
<b>C.K., a minor,</b>	:	
<b>through his Educational Guardian</b>	:	
<b>Shawn Gatto and</b>	:	
<b>Jennifer Staley McCrady</b>	:	
<b>as next friend</b>	:	<b>CLASS ACTION</b>
	:	



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<b>Jennifer Staley McCrady</b>	:	
<b>as next friend</b>	:	<b>CLASS ACTION</b>
	:	
<b>W.R., a minor,</b>	:	
<b>through his Educational Guardian</b>	:	
<b>Celia Barlow and</b>	:	
<b>Jennifer Staley McCrady</b>	:	
<b>as next friend</b>	:	
	:	
<b>Individually and on behalf of all others</b>	:	
<b>similarly situated</b>	:	
	:	
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>MCKEESPORT AREA SCHOOL DISTRICT,</b>	:	
	:	
<b>Defendant.</b>	:	

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**PRELIMINARY STATEMENT**

1. Named Plaintiffs T.P., C.K. and W.R. are school aged children who live at Auberle, a group home for children who are dependent and/or delinquent. Plaintiffs bring this lawsuit on behalf of all school-age children who have been, are currently, or in the future

may be educated in separate classrooms at McKeesport Area School District (“the District”) based on their status as residents of Auberle.

2. Although all Plaintiff children are entitled to attend the regular public schools of the District under state law, 24 P.S. §13-1306, the District instead requires them to attend classrooms designated solely for residents of the Auberle group home. These classrooms are located on the second floor of the District’s alternative school building and are sometimes referred to as the “East End Academy” or “alternative education for placement kids” (hereinafter “Auberle-student classrooms”).
3. The education provided to Plaintiffs in these classrooms is separate and apart from and unequal to the education provided to their McKeesport’s peers in the regular education setting. In contrast to their peers educated in the District’s regular schools, Plaintiffs have far fewer educational and social opportunities. For example, they are educated in multi-grade classrooms, receive fewer instructional hours, have no access to vocational education, Advanced Placement courses, libraries or laboratories and have more limited access to computers and books.
4. In addition, students such as named Plaintiff W.R. who are entitled to special education services are generally offered the same educational placement as all children from the Auberle group home, rather than individualized placements based on their needs. These students also have limited access to a qualified special education teacher or special education supports.
5. All Plaintiffs are excluded from regular school classes and are severely stigmatized as a result of the District’s discriminatory and disparate treatment.

6. Defendant McKeesport School District has maintained policies and practices that have resulted in the systematic exclusion of the named Plaintiffs, and such acts of denial and exclusion violate Plaintiffs' rights under state and federal laws as well as the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Plaintiffs now seek declaratory and injunctive relief including an order directing the District to admit Plaintiff children to the District's regular public schools immediately with access to the full range of educational programs and opportunities to which they are entitled in accordance with applicable law. Plaintiffs also request that the District be directed to make individualized educational placement decisions for all students with disabilities and that all Plaintiffs be awarded compensatory educational services to make up for the educational services these children have already lost.

#### **PARTIES**

7. Plaintiff T.P. is a twelve-year old student who lives at the Auberle group home located in McKeesport, Allegheny County, Pennsylvania (hereinafter "Auberle") and is currently educated in classrooms designated exclusively for residents of Auberle (hereinafter "Auberle-student classrooms"). T.P. is represented in this litigation by his court-appointed education decisionmaker Eli Zlokas, Esq., and by his *guardian ad litem* as next friend, Jennifer Staley McCrady, Esq.
8. Plaintiff C.K. is a fourteen-year old student who lives at Auberle and is educated in Auberle-student classrooms. He is represented in this litigation by his court-appointed education decisionmaker Shawn Gatto, Esq., and by his *guardian ad litem* as next friend, Jennifer Staley McCrady, Esq.
9. Plaintiff W.R. is a thirteen-year old student who lives at Auberle and is educated in

Auberle-student classrooms. He is eligible for services under the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.* (“IDEA”) and has an individualized education plan (“IEP”). He is represented in this litigation by his court-appointed education decisionmaker Celia Barlow, Esq., and by his *guardian ad litem* as next friend, Jennifer Staley McCrady, Esq.

10. Defendant is a public school district constituted pursuant to Pennsylvania law, 24 P. S. §2-201 *et seq.* and is a local educational agency within the meaning of the IDEA, 20 USC § 1401(19).

#### **JURISDICTION AND VENUE**

11. This Court has jurisdiction pursuant to 42 Pa.C.S. §931 in that the matters complained of occurred within the County of Allegheny and this Court has original jurisdiction over all cases not exclusively assigned to another court.

#### **CLASS ACTION ALLEGATIONS**

12. Named Plaintiffs bring this action on behalf of all students who were in the past two years, are currently, or may in the future be educated in “Auberle-student classrooms” designated exclusively or primarily for students who reside in the Auberle group home.
13. Pursuant to Pa.R.Civ.P. 1702, 1708, and 1709, Plaintiffs meet the standards to assert this class action:
  - a. The class represented by named Plaintiffs are past, current, or future residents of Auberle’s group home, eligible to attend school in the District, and excluded from attending the District’s regular public schools.

- b. There are currently over fifty (50) students who reside at Auberle and are educated in classrooms that are located separate and apart from the District's regular education school. In past years, students residing at Auberle were also educated separately in these "Auberle-student classrooms." Furthermore, there are expected to be additional students in the future living at Auberle and placed in Auberle-student classrooms. This large number of past, current, and future students makes joinder of all members impracticable.
- c. There are questions of law and fact common to the class, such as whether the District's practice of restricting Plaintiffs' access to regular public school classrooms violates state law, 24 P.S. § 13-1306, the Equal Protection Clause of the United States Constitution, and other state and federal special education laws.
- d. The claims presented by named Plaintiffs are typical of the claims of the proposed class and the injunctive relief sought is based on the same unlawful conduct.
- e. The representative Plaintiffs will fairly and adequately assert and protect the interests of the class, in that their attorneys are experienced in litigation in the areas of education law; the representative Plaintiffs have no conflicts of interest in the maintenance of this class action; and, because legal services are being provided *gratis*, there is no issue of adequacy of financial resources on the part of the representative Plaintiffs.
- f. A class action is a fair and efficient method for adjudication of this controversy inasmuch as this class action addresses systemic legal violations that could not be fully remedied via individual lawsuits.

## **FACTS**

### **Individual Allegations**

14. Plaintiff T.P. is a twelve-year old student in seventh grade who resides at Auberle. He has been adjudicated dependent and parental rights have been terminated. He was placed at Auberle's group home on June 24, 2010.
15. Prior to placement at Auberle, T.P. attended a regular public school in Penn Hills School District, where he was on the honor roll.
16. Once at Auberle, the District assigned T.P. to an Auberle-student classroom, separate and apart from the regular McKeesport public schools and classrooms.
17. The Auberle-student classroom to which T.P. is assigned serves students of varying grade levels in the same room; in contrast, the District's regular education classrooms are typically grouped by grade and instruction level.
18. The instructional program provided to T.P. in the Auberle-student classroom is more limited than that provided to his peers in the District's regular education program.
19. As a result of his placement in the Auberle-student classroom, T.P. does not have the opportunity to interact with the District's regular school population during school hours.
20. As a result of his placement in the Auberle-student classroom, T.P. is likely to be viewed by other students and faculty as a child who is not suited to attend regular school and therefore stigmatized. T.P. is also likely to be stigmatized and treated differently upon entering a new school or returning to his home school district.
21. Plaintiff C.K. is a fourteen-year old student in ninth grade who resides at Auberle. He was adjudicated dependent and delinquent and parental rights have been terminated. C.K. was placed at the Auberle group home on August 20, 2010.

22. Prior to living at Auberle, C.K. attended a regular public school in the Pittsburgh Public School District.
23. Once at Auberle, the District assigned him to an Auberle-student classroom, separate and apart from the regular McKeesport public schools and classrooms.
24. The Auberle-student classroom to which C.K. is assigned serves students of varying grade levels in the same room; in contrast, the District's regular education classrooms are typically grouped by grade and instruction level.
25. The instructional program provided to C.K. in the Auberle-student classroom is more limited than that provided to his peers in the District's regular education program.
26. As a result of his placement in the Auberle-student classroom, C.K. does not have the opportunity to interact with the District's regular school population during school hours.
27. As a result of his placement in the Auberle-student classroom, C.K. is likely to be stigmatized.
28. Plaintiff W.R. is a thirteen-year old boy in eighth grade and a resident of Auberle. He has been adjudicated dependent and parental rights have been terminated. W.R. was placed at the Auberle group home on April 20, 2009.
29. Prior to living at Auberle, W.R. attended a regular public school in the Pittsburgh Public School District.
30. W.R. is eligible for special education services under the IDEA and has an Individualized Education Program (IEP), developed prior to his arrival in the District.
31. Once at Auberle, the District placed him in the Auberle-student classroom without any individualized determination as to whether this was an appropriate placement in the least restrictive environment in light of his individualized education needs.

32. The Auberle-student classroom to which W.R. is assigned serves students of varying grade levels in the same room; in contrast, the District's regular education classrooms are typically grouped by grade and instruction level.
33. The instructional program provided to W.R. in the Auberle-student classroom is more limited than that provided to his peers in the District's regular education program.
34. W.R. does not have the opportunity to interact with the District's regular school population during school hours.
35. As a result of his placement in the Auberle-student classroom, W.R. is likely to be viewed by other students and faculty as a child who is not suited to attend regular school and therefore stigmatized. W.R. is also likely to be stigmatized and treated differently upon entering a new school or returning to his home school district.

#### **Class Allegations**

36. Auberle is a group home residence in McKeesport, Pennsylvania, licensed by the Department of Public Welfare as a child residential facility pursuant to Title 55 Pa. Code Chapter 3800 *et seq.* Auberle houses children from ages seven through eighteen (7- 18) who are placed in the dependency and/or delinquency systems. This is not a secure facility, and none of the Plaintiffs has been court-ordered to be educated in any specific educational placement.<sup>1</sup> The placement also includes a Supervised Independent Living (SIL) program for youth ages sixteen through twenty-one (16-21) years old.
37. Auberle provides therapeutic care and treatment to children on-site, but does not provide education on-site to residents of the group home.

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<sup>1</sup>Auberle also provides other services to dependent and delinquent youth, but this action solely concerns children living in the Auberle group home who are educated in Auberle-student classrooms through McKeesport Area School District.

38. All children are placed at the Auberle group home because they have been adjudicated dependent and/or delinquent.
39. Plaintiff class members may reside in the Auberle group home for a period of months or multiple years.
40. As residents at Auberle, Plaintiff class members are eligible to enroll in the McKeesport Area School District pursuant to 24 P.S. § 13-1306.
41. The District requires all Plaintiff class members to submit a copy of the court order placing them at Auberle in order to be considered for entry into school.
42. The District automatically places Plaintiff class members in “Auberle-student classrooms” designated exclusively for residents of Auberle’s group home.
43. The District’s placement of Plaintiff class members in this separate setting is based solely on their status as residents of Auberle group home and is made without regard to a student’s age, ability, grade or educational needs.
44. The District places all Plaintiffs eligible for special education services in the same Auberle-student classrooms without regard to their eligibility for special education services or pre-existing IEPs and prior to reviewing special education records.
45. The District does not make any individualized determinations regarding the appropriate placement for Plaintiffs eligible for special education services as required under the IDEA and accompanying state laws and regulations.
46. The Auberle-student classrooms are housed in the District’s alternative education building that is sometimes referred to as “East End Academy” or “alternative education for placement kids.”

47. The only children attending classes in that building are: (a) students in “alternative education” whom the District has deemed to be disruptive and subject to disciplinary transfer outside of the regular school setting pursuant to 24 P.S. § 1901 *et seq.*; and (b) students in the Auberle-student classrooms designated for children living at Auberle and who have sought enrollment in the District’s regular education schools.
48. As a result of their placement in segregated Auberle-student classrooms, Plaintiffs are educated with students of multiple grade levels in the same room whereas students in the District’s regular education classrooms are typically instructed in classrooms divided by grade and instruction level.
49. Plaintiffs do not have the opportunity to interact with the District’s regular school population during school hours.
50. The instructional program provided to Plaintiffs in the Auberle-student classrooms is more limited in scope and content than the educational program the District provides to students in its regular education buildings or classrooms.
51. The educational program provided to Plaintiffs mainly consists of completing worksheets while the educational programs provided to students in the District’s regular education school mainly consists of instruction.
52. Unlike their peers attending the District’s regular public schools, Plaintiffs do not have access to Advanced Placement courses.
53. Unlike their peers attending the District’s regular public schools, Plaintiffs do not have access to vocational education.
54. Unlike their peers attending the District’s regular public schools, Plaintiffs do not have access to science laboratories.

55. Plaintiffs have less access to technology than their peers attending the District's regular public schools.
56. Unlike their peers attending the District's regular public schools, Plaintiffs do not have access to school libraries.
57. Plaintiffs receive fewer books than their peers attending the District's regular public schools.
58. Plaintiffs have a shorter school day than their peers attending the District's regular public schools.
59. Plaintiffs are not afforded the opportunity to participate in extra-curricular activities that is afforded to their peers in the District's regular schools and programs, with the exception of the District's football program.
60. There is one special education teacher in the entire "alternative education" building who serves all students in the Auberle-student classrooms and all students in the Alternative Education for Disruptive Youth Program.
61. Plaintiffs with disabilities are not afforded the full range of special education supports and services provided to their peers in the District's regular schools and programs.
62. The majority of students placed in the Auberle-student classrooms remain there for the entire time they reside at the Auberle group home.
63. As a result of Defendant District's placement of Plaintiffs in separate Auberle-student classrooms, members of the Plaintiff class receive an education that is more limited than, and inferior to, the education provided to their peers in the District's regular public schools.

**LEGAL CLAIMS**

**COUNT I  
VIOLATION OF 24 P.S. § 13-1306**

64. All paragraphs above are incorporated as if fully set forth herein.
65. As children who are residents of a group home, Plaintiffs are entitled to attend public school in the district where the group home is located. Specifically, 24 P.S. § 13-1306 states in relevant part:

The board of school directors of any school district in which there is located any orphan asylum, home for the friendless, children's home, or other institution for the care or training of orphans or other children, shall permit any children who are inmates of such homes, but not legal residents in such district, to attend the public schools in said district...  
24 P.S. § 13-1306(a)

66. Auberle is a children's institution within the meaning of 24 P.S. § 13-1306.
67. State education regulations promulgated to implement 24 P.S. § 13-1306 further require nonresident children living in facilities to be treated in the same manner as resident students with respect to enrollment. 22 Pa Code §§ 11.11(c), 11.18(d).
68. By preventing Plaintiffs from attending the regular public schools of the District and restricting Plaintiffs to a single limited program that deprives Plaintiffs of the full range of educational services, options, and opportunities provided to other resident students in the District, Defendant has violated Plaintiffs' rights under §13-1306 and its implementing regulations, 22 Pa Code §§ 11.11(c) and 11.18(d).

## **COUNT II**

### **VIOLATION OF EQUAL PROTECTION CLAUSE OF FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION**

69. All paragraphs above are incorporated as if fully set forth herein.
70. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution states, “No State shall ... deny to any person within its jurisdiction the equal protection of the laws.”
71. By restricting Plaintiffs to the Auberle student classrooms and to a single limited program that deprives Plaintiffs of the full range of educational services, options, and opportunities provided to other resident students in the District based solely on Plaintiffs’ status as residents of a group home, Defendant has violated Plaintiffs’ right under the Equal Protection Clause as enforced through 42 U.S.C. § 1983.

## **COUNT III**

### **VIOLATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) AND 22 PA CODE CHAPTER 14**

72. All paragraphs above are incorporated as if fully set forth herein.
73. Class Plaintiffs include some students who are eligible for special education services under the Individuals with Disabilities Education Act, 20 USC § 1400 *et seq.* and Pennsylvania’s state regulations, 22 Pa Code Chapter 14.
74. As students who are eligible under the IDEA and Chapter 14, they are entitled to an Individualized Education Program, that is, a written statement regarding services and school placement that is developed, reviewed and revised for each individual student. 34 CFR 300.320; 22 Pa. Code 14.102(a)(2)(xxvii).

75. Each placement decision must be individualized and based on the child's Individualized Education Program (IEP). 34 C.F.R. 300.116(a)(2); 22 Pa Code 14.102(a)(2)(xiii).
76. By placing Plaintiff class members with disabilities in the Auberle student classrooms and refusing to permit Plaintiff children with disabilities to be educated in any placement other than Auberle-student classrooms, Defendant District denies these Plaintiffs their right to an individualized placement decision based on their IEP as guaranteed by the IDEA and Chapter 14.
77. By placing Plaintiff class members with disabilities in Auberle-student classrooms, the District fails to meet its obligations to provide Plaintiff students with disabilities access to a full continuum of placement as required by the IDEA, 20 U.S.C. §1412(a)(5) and 34 C.F.R. 300.115 and 22 Pa Code 14.102(a)(1)(iv) and 22 Pa. Code 14.145 (5) (implementing IDEA's requirements).
78. Exhaustion of this claim is not required because the class-wide relief needed to remedy Defendant's systemic refusal to admit class members to its public schools cannot be remedied through individual Special Education hearings or proceedings. The conduct as alleged concerns the District's adoption of a policy or practice of general applicability that is contrary to the law. Because resort to the administrative process would be futile to address the claims set forth herein, exhaustion of administrative remedies is not required.

### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs, individually and on behalf of the class, request the following relief:

79. Certification of this case as a class action.

80. Issuance of a declaratory judgment declaring that the District's placement of class members in separate classrooms based on their status as residents of Auberle's group home is illegal under state and federal law.
81. Issuance of a permanent injunction directing the District to admit all Plaintiff children to the District's regular schools immediately with access to the full range of educational programs and opportunities to which they are entitled in accordance with applicable law and enjoining the District from placing class members residing at Auberle in separate classrooms designated exclusively or predominantly for Auberle residents.
82. Issuance of a permanent injunction directing the District to treat Plaintiff children in the same manner as resident children of the District, including treating Plaintiffs with disabilities in accordance with federal and state disability laws.
83. Award compensatory education services to all Plaintiffs as provided by state and federal law.
84. Award to Plaintiffs their attorneys' fees and costs.
85. Grant such other and further relief as may be appropriate.

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